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October 15, 2004

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: WT Docket No. 03-103
Notice of *Ex Parte* Communication**

Dear Ms. Dortch:

This is to inform you that earlier today, on behalf of AirCell, Inc. ("AirCell") and at the request of Commission staff, I transmitted the attached documents to Richard Arsenault of the Wireless Telecommunications Bureau ("WTB"). In addition to these documents, I provided Mr. Arsenault with an Internet link (<http://api.hq.faa.gov/foreca03/start.htm>) to Federal Aviation Administration data, citing Tables 22, 23 and 29. These materials constitute the source documents referenced on the last page of AirCell's presentation to Commission staff on October 13, 2004, which was already filed in the above-referenced docket.

Separately, I also transmitted the attached e-mail to Mr. Arsenault, which clarifies AirCell's position with regard to alternative licensing and auction approaches for the air-to-ground ("ATG") band. Specifically, the e-mail indicates that AirCell does not support the auction of a single 4 MHz license, nor the auction of a single 3 MHz and 1 MHz license. Both approaches would make it possible for one licensee to hold a monopoly on the provision of broadband ATG services.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, I am filing this notice electronically in the above-referenced docket. In addition, I am sending one copy of this notice to the FCC representative listed below. Please contact me directly with any additional questions.

Respectfully submitted,

/s/ Michele C. Farquhar

Michele C. Farquhar
Counsel to AirCell, Inc.

Enclosures

cc: Richard Arsenault

From: Farquhar, Michele C.
Sent: Friday, October 15, 2004 5:43 PM
To: 'richard.arsenault@fcc.gov'
Cc: Farquhar, Michele C.; 'kathy.harris@fcc.gov'; 'julius.knapp@fcc.gov'; 'jim.schlichting@fcc.gov'; bgordon@aircell.com; 'peter.tenhula@fcc.gov'
Subject: AirCell update

Richard:

As Bill Gordon and I discussed in our phone conversation with you today, AirCell would like to note and clarify three items for the FCC staff involved in the Air-to-Ground (ATG) proceeding, FCC Docket 03-103:

1) AirCell does not support any ATG auction scenario whereby one bidder (*i.e.*, Airfone) can acquire all of the potential broadband ATG licenses, thereby establishing a monopoly in the band. For example, AirCell would not support an auction of just one 4 MHz ATG license, which could be bought by a single entity -- even if this one license could also be purchased by a consortium of bidders that would subdivide the license -- because there is no guarantee that the consortium would win the license. Nor would AirCell support the licensing of two or more ATG licenses, if they can all be acquired by the same entity -- thereby precluding competition in the band and the ability of other providers to offer ATG service. Instead, AirCell would support auction and licensing scenarios that would result in at least two broadband ATG providers (requiring at least 2.5 MHz of overlapping spectrum per provider), with a spectrum cap or cross-ownership rule in place to ensure a competitive broadband ATG market.

2) In response to your question, AirCell would not support an auction of one 3 MHz ATG license and one 1 MHz ATG license, for the reasons noted above. Specifically, this approach would create the potential for just one broadband ATG licensee to emerge following an auction, even if a consortium of bidders were able to bid on the 3 MHz band and subdivide it post-auction. Moreover, AirCell's simulation of overlapping licenses was done on the basis of a short (1-2 year) transition period, with the overlapping licenses initially "stacked" into 3 MHz and then moving to share the full 4 MHz of ATG spectrum.

3) AirCell and Boeing engineers are now working on a revised two-licensee ATG plan based on the cross-polarization techniques described in our current approach. We anticipate that this new approach will require significantly less coordination between the two licensees, and we hope to file the new approach with the FCC early next week. We would also like to request a meeting early next week to discuss the new plan in more detail. [We have a meeting scheduled on Tuesday, October 19 with WTB Chief Muleta; the meeting to discuss this approach could be done in conjunction with that meeting, or any other time that day.]

The critical concern that AirCell has expressed in this proceeding is to ensure that the broadband ATG market is competitive, and that no one company has veto power over competitive entry.